

# Important Colorado Legislation Impacting Real Estate Development, Green Building and Common Interest Communities

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The 2010 Colorado Legislative Session is underway and the legislators are considering a number of bills that may affect your development, add costs to your business or affect property rights. We have summarized recently introduced bills of particular interest below.

### **Development and Property Rights**

[HB10-1259 Concerning amendments to the "Municipal Annexation Act of 1965" in order to conform the act to provisions of the State Constitution.](#)

The bill proposes to amend the "Municipal Annexation Act of 1965" ("Act") to (i) prohibit an unincorporated area from being annexed to a municipality unless one of the constitutional annexation requirements first has been met, in addition to satisfying existing statutory requirements; (ii) to amend the requirements affecting a petition for annexation to specify that a petition must contain an allegation that the signers of the petition comprise more than 50% of the landowners in the area and own more than 50% of the area proposed to be annexed, excluding public streets and alleys and any land owned by the annexing municipality; and (iii) specifies that annexation elections are to be decided by a majority of the landowners and registered electors in the relevant area and not the qualified electors or qualified electors and landowners as under existing law.

This bill will change current law to allow voting by registered voters who do not reside within the area to be annexed. In addition, the bill addresses conflicting annexation claims of two or more municipalities by permitting the district court to determine whether the annexation being processed by the second municipality complies with the constitutional annexation requirements and the applicable provisions of the act.

[HB10-1292 Concerning a clarification of the conditions on land-use approvals that may be imposed by local governments under statutory provisions governing the regulatory impairment of property rights.](#)

In connection with conditions that may be imposed on land-use approvals by local governments under statutory provisions governing the regulatory impairment of property rights, this bill addresses the construction of the

current statutory requirement prohibiting a local government from imposing any discretionary condition upon a land-use approval unless the condition is based upon duly adopted standards that are sufficiently specific to ensure that the condition is imposed in a rational and consistent manner. This bill proposes to clarify that the phrase "any discretionary condition" refers back to the constitutionally based conditions found in C.R.S. 29-20-203(1) (e.g., that "there is an essential nexus between the dedication or payment and a legitimate local government interest"; and "the dedication or payment is roughly proportional both in nature and extent to the impact of the proposed use or development of such property"); and, accordingly, would not create an independent cause of action under the statute.

### **Green Building/Energy Jobs/Geothermal Development**

[HB10-1328 Concerning the "New Energy Jobs Creation Act of 2010", and, in connection therewith, creating the Colorado New Energy Improvement District and authorizing the District to fund new energy improvements by issuing special assessment bonds payable from special assessments levied on eligible real property owned by persons who voluntarily join the District in order to have the district help them fund new energy improvements to the eligible real property.](#)

This bill proposes to create the Colorado New Energy Improvement District (the "District") as an independent public body and a public instrumentality performing an essential public function, and clarifies that, under applicable Colorado Supreme Court case law, the District is not subject to the provisions of the Taxpayer's Bill of Rights, and specifies the qualifications, manner of appointment, and terms of the board of directors of the District.

This bill also specifies that the purpose of the District is to help provide the special benefits of new energy improvements to owners of eligible real property who voluntarily join the District by establishing, developing, financing, and administering a new energy improvement program in counties that have approved the conduct of the program by the District through which the District can provide assistance to any such owner in completing a new energy improvement by providing reimbursement or a direct payment for all or a portion of the cost of completing a new energy improvement, and the bill specifies the powers and duties of the District.

[HB10-1331 Concerning the establishment of a Green Building Incentive Pilot Program administered by the Governor's Energy Office to incentivize the making of energy efficiency improvements to existing residences with current home energy ratings below minimum standards for people who purchase highly efficient new residential construction.](#)

This bill proposes to require the Governor's Energy Office to create a Green Building Incentive Pilot Program whereby grants are awarded to qualified homebuyers who are selling current primary residences with home energy ratings below minimum standards and purchasing highly efficient new residential construction. The purpose of the grant is to make improvements to the homebuyer's current primary residence for purposes of increasing the home's energy efficiency. This bill specifies that the grants are to be from federal funds transferred to the Governor's Energy

Office, including but not limited to those provided by the federal "American Recovery and Reinvestment Act of 2009".

**SB10-174 Concerning the regulation of the development of geothermal resources.**

This bill relates to the utilization of geothermal resources for commercial, residential, agricultural, public facilities, or other energy needs other than the commercial production of electricity. This bill proposes to allow municipalities and counties to designate geothermal development as an activity of state interest under House Bill 74-1041. This bill specifies that the property right to the following types of geothermal resources are an incident of the ownership of the overlying surface: (i) nontributary groundwater; and (ii) not nontributary groundwater.

This bill proposes to adopt the reasonable accommodation doctrine regarding relations between surface owners and geothermal resource developers. The bill specifies that "material injury" includes an alteration in the temperature of water only if the alteration adversely affects a valid, prior geothermal right. In addition, this bill requires that geothermal energy facilities be valued for the purpose of property taxation in the same manner in which wind or solar energy facilities are valued.

**Common Interest Communities**

**HB10-1278 Concerning the creation of an ombudsman for matters arising under the "Colorado Common Interest Ownership Act" ("CIOA").**

This bill proposes to create the office of the "HOA Ombudsman" within the Colorado Division of Real Estate (the "Division") to advocate on behalf of unit owners in common interest communities ("HOAs"), to mediate disputes, and act as a clearing house for information on the governing law. This bill directs the Secretary of State to collect a surcharge on registration fees of HOAs that are organized as nonprofit corporations to pay the direct and indirect costs of the Ombudsman's office. The Ombudsman's powers also include the reporting of suspected violations of CIOA or of the Division's rules to the Division; and reporting other suspected violations of law to the appropriate authorities.

**HB10-1290 Concerning procedures for small planned communities to elect to exempt themselves from certain provisions of the "Colorado Common Interest Ownership Act" ("CIOA").**

This bill proposes to allow a small common interest community to exempt itself from most of the provisions of CIOA, upon a vote of the members or shareholders or, if there are no members or shareholders entitled to vote, upon a vote of the community's executive board. This option only applies to communities that: (i) have no more than 20 units; (ii) do not impose common interest expense assessments of over \$400 per year (adjusted for inflation); or (iii) have annual revenues or expenses of less than \$250,000.

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*We will be providing regular updates to the status of these proposed bills and new bills that are introduced during the session relating to real estate development, construction, green building, CIOA, lending and leasing. Please contact the author, Rebecca W. Dow at (303) 295-8413 or [rdow@hollandhart.com](mailto:rdow@hollandhart.com) for more information.*

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